IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T & I.J.

CHAMBER SUMMONS NO.10 OF 2007

IN

TESTAMENTARY SUIT NO.78 OF 1994

...

Feroze Homi Duggan ...Plaintiff

v/s.

Jean Nusly Duggan ...Defendant

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Mr.H.G.Thakkar i/b Solomon & Co. for the Plaintiff.

Mr.Ruchir Tolat i/b L.C.Tolat & Co. for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 8TH MARCH,2007

P.C.:

1. This Chamber Summons is taken out by the Plaintiff seeking procedural direction of the court. First prayer in the Chamber Summons is for

condonation of delay in making this application. It appears that, initially this suit was filed as testamentary petition for letters of administration with Will attached. It was registered as Testamentary Petition No.156 of 1994. It was filed on 7th March, 1994. That petition was granted by order dated 30th May, 1994.

2. It appears that thereafter a Misc.Petition being Misc.Petition No.16 of 1994 was taken out for revocation of grant of letters of administration. That petition was decided by order dated 9th December, 1994 and the grant of letters of administration was revoked. It appears that, thereafter, affidavit in support of the caveat was filed and the petition was converted into Testamentary Suit.

3. Chamber Summons No.757 of 1996 was taken out by the Plaintiff for amendment in the plaint. That Chamber Summons was initially rejected by the learned single Judge. That order was challenged in appeal. That appeal was decided by order dated 24-6-2004 and the application made by the Plaintiff for amendment in the plaint was granted by the Appeal Court. The

Plaintiff, thereafter, carried out amendments in the plaint.

4. The Defendants then took out Chamber Summons for striking out the amendments which were carried out by the Plaintiff on the ground that the amendments have not been properly carried out. That Chamber Summons was rejected by order dated 16-6-2005. Against that order an appeal was carried. That appeal was decided by order dated 18-11-2005.

5. This Chamber Summons was taken out on 29-1-2007. It is obvious that there is delay in taking out the Chamber Summons. Delay is caused because of this checkered history of the litigation. Considering that the substantive rights of the Plaintiff are to be decided and taking out this Chamber Summons is essentially a matter of procedure, in my opinion, delay deserves to be condoned, considering that the power of the court to condone the delay is to be liberally exercised. The Chamber Summons is, therefore, granted in terms of prayer clause (a).

6. So far as prayer clause (b) & (c) is concerned, there is no objection raised on behalf of the

Defendants. Therefore, Chamber Summons is granted in terms of prayer clause (b) & (c) also.

7. So far as relief claimed by prayer clause (d) is concerned, only objection raised on behalf of the Defendants was that the Plaintiff will not examine himself as a witness in the case. The question whether examination of the Plaintiff as a witness in the matter is necessary or not is to be decided by the Plaintiff himself. In any case that stage will come only after the Plaintiff files his examination in chief. The objection raised is premature and therefore is liable to be rejected. Chamber Summons is, therefore, also to be granted in terms of prayer clause (d).

8. Chamber Summons is therefore, granted in terms of prayer clauses (a) to (d), with no order as to costs.

9. For prayer clause (b), two weeks' time is fixed. So far as prayer clause (c) is concerned, after one week of the parties filing their respective affidavits of documents the office shall place the suit before the court for settlement of issue. After issues are framed, the parties shall file their

affidavit in terms of prayer clause (d), within a period of four weeks from the date on which issues are framed.

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